The Court held that s. 135 sub-s. 1 (b) of the Criminal Procedure Code did not apply when a person was summarily committed for trial under s. 11 of the Oaths Ordinance.

In *Lee Yew v. Public Prosecutor*[3] Sproule Acting C.J.C. held that there was no appeal from and no revision of a summary sentence by a Magistrate under s. 14 of the F.M.S. Affirmations Enactment then in force (see Voules Vol. I at p. 84) save as in that section provided and that the provisions of the Criminal Procedure Code did not apply to such sentences. Part of the argument in favour of an appeal lying was founded on the absence from the section (as it then stood) of the words "as for contempt of Court" which appear in the Colony Ordinance. "In my opinion" said Sproule Acting C.J.C., "the Affirmations Enactment stands enclosed within its own four walls and confers a separate jurisdiction upon the Courts with separate machinery for summary sentence without trial and summary revision by the Supreme Court, all of which are entirely outside the scope of the Criminal Procedure Code."

In *Kasi Chetty and Palaniappa Chetty v. P.P.*[4] Elphinstone, C.J. held that an appeal lay from a sentence of imprisonment imposed under s. 14 of the Affirmations Enactment of 1925 which uses the words "as for contempt" and he declined to follow *Lee Yew v. P.P. supra.*

The learned Chief Justice seems to have founded himself on the fact that the Affirmations Enactment of 1925 which was passed subsequently to the Criminal Procedure Code of 1903 did not expressly repeal or amend s. 258 of the latter Code (See s. 302 of the Colony Code). The Affirmations Enactment with which Sproule Acting C.J.C. had to deal was passed in 1898, prior to the Criminal Procedure Code.

It is unnecessary to express any opinion as to whether a statute "to repeal and re-enact" an earlier statute must, when the provisions are the same, be deemed to be subsequent in point of time to an intermediate statute.

In any case the Colony Oaths Ordinance was passed long before the Criminal Procedure Code and the latter does not expressly repeal or amend s. 11 of the former.

Under the F.M.S. Enactment as it stood at the date of each of the above cases there was provision that a Magistrate exercising the summary power concerned must make a full report to the Supreme Court which was expressly given power to confirm the sentence or to quash it or to remit the punishment either in whole or part.

These provisions imply a power of revision and this special power would appear unnecessary if the General Revision Sections of the F.M.S. Criminal Procedure Code applied.

As Braddell, J. pointed out in *In Re Puteh, supra* in this Colony the Magistrate reports not to the Court but to the Attorney-General.

I follow *In re Puteh* and hold that an appeal does not lie and for the same reasons I have no power to revise.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

April 3, 1941.

IN THE MATTER OF SECTION 11 (a) (ii) OF THE COURTS ORDINANCE (CAP. 10) AND IN THE MATTER OF APPLICATION No. 578 OF 1940 TO THE RENT ASSESSMENT BOARD EX PARTE TAN SWEE ENG.

Increase of Rent (Restriction) Ordinance 1939—Sec. 7 sub-s. 5 Board's powers of re-hearing—Proceedings under s. 8.

The powers of re-hearing given to the Board by s. 7 sub-s. 5 of the Increase of Rent (Restriction) Ordinance only apply to applications under s. 7 of that Ordinance and not to applications under s. 8. A mandamus to the Board calling on them to re-hear an application made under s. 8 was refused.

Cases referred to:—

(1) *In re Rent Restriction Ordinance 1921 (Melanie Lee's case)* 1933 S.S.L.R. 536; (1932) M.L.J. 180 followed.

(2) *Barras v. Aberdeen Steam Trawling and Fishing Co.* 1933 A.C. 412.

ORIGINATING MOTION.

Roland St. John Braddell for applicant.
E. R. Koek for Chan Wing.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

McElwaine, C.J.—The applicant Tan Swee Eng was lessee of the Empire Cinema Hall, one Chan Wing being the landlord.

Chan Wing made an application (No. 536 of 1940) to the Rent Assessment Board for permission (under section 8 of the Increase of Rent Restriction Ordinance, 1939) to apply to the Court for an order for the ejectment of the applicant from the Empire Cinema Hall.

After a hearing the Board made an order granting the permission.

The applicant requested the Board to re-hear the application, and the Board issued a Summons in Application No. 578 of 1940 to Chan Wing to attend before the Board for the hearing of an application by the applicant that Application No. 536 should be re-heard.

Application No. 578 of 1940 duly came on for hearing before the Board when, upon a preliminary objection and without considering the merits, the Board held that it had no power to re-hear Application No. 536 of 1940.

The applicant now asks for an Order of Mandamus requiring the Rent Assessment Board to have Application No. 578/1940 and to decide the same upon the merits.

It is common case that the Board in refusing to re-hear Application 536 did not exercise any discretion. It considered itself precluded from re-hearing by the decision in *Melanie Lee's Case*[1].

Mr. Braddell, counsel for the applicant, took two points before me:

(1) that the portion of the headnote in Melanie Lee's case "It has no power to re-hear applications except under section 9 (5) of the Rent Restriction Ordinance, 1921. Such powers of re-hearing only apply to applications under section 9 of that Ordinance, and not to other applications under other parts of the Ordinance" is not borne out by the Judgment;

(2) that section 7 (5) of the Increase of Rent Restriction Ordinance, 1939, which reads:—

> "The Board shall have full powers of re-hearing, reconsideration and revision in any case, in which it thinks fit to exercise such powers, and at any time"

applies to applications under section 8 of the Ordinance.

For the purposes of this case section 7 of the present Ordinance may be taken as identical with section 9 of the Ordinance of 1921.

"It may be taken for granted that the Legislature is acquainted with the actual state of the law. Therefore, when the words of an old statute are either incorporated in, or by reference made part of, a new statute, this is understood to be done with the object of adopting any legal interpretation which has been put on them by the Courts. So, the same words appearing in a subsequent Act in *pari materia,* the presumption arises that they are used in the meaning which has been judicially put on them and that, unless there be something to rebut that presumption, the new statute is to be construed as the old one was". Maxwell, 8th Edition, 268–70. *Barras v. Aberdeen Steam Trawling and Fishing Co.*[2].

I am, therefore, of opinion that if Barrett-Lennard, J. decided in Melanie Lee's case that s. 9 sub-s. 5 only applied to s. 9 and that it did not apply to s. 10 of the Ordinance of 1921, I am bound to hold that s. 7 sub-s. 5 of the present Ordinance does not apply to proceedings under s. 8.

The following facts may be elicited from the judgment of Barrett-Lennard, J., and for the sake of clarity I give some dates mentioned in the affidavits filed in that matter.

On 3rd May, 1921, the Board heard an application for permission to take ejectment proceedings and granted the application under the mistaken impression that the tenant had been served with notice of the hearing.

It having been brought to the notice of the Board that the tenant had not received the notice of the date of hearing, the Board decided to re-hear. "Up to that stage", said Barrett-Lennard, J. "the Board was probably quite right. They had not heard the tenant and undoubtedly, the tenant had a right to be heard". On 10th May Counsel for the claimant duly appeared before the Board and was called upon to present his case. He said his client was not present and that as he was not fully instructed he could not argue. The Board then resolved to abide by the order which they had made on 3rd May. Later, a second application for re-hearing was made and the Board fixed the 24th May for re-hearing. On that day counsel for the landlord raised a preliminary objection that the Board had no power to re-hear. Having heard counsel for the tenant the Board upheld the landlord's objection, and in Barrett-Lennard, J's view the Board in so doing was perfectly right.

Notwithstanding this decision of 24th May the Board subsequently decided that it would re-hear the application, and the proceedings before Barrett-Lennard, J. were for a writ of prohibition to prevent the Board from re-hearing and in this the landlord succeeded.

It appears to me that Barrett-Lennard, J. decided that there was no effective hearing of the application until 10th May when the tenant's counsel appeared but found himself unable to argue; that that was a hearing, and that in deciding by the Order of 10th May to abide by its order of 3rd May, the Board had made an order after hearing the parties; and that on 24th May the Board was perfectly right in deciding that it had no power to re-hear.

In my opinion Barrett-Lennard, J's decision amounts to this—once there has been an effective hearing and adjudication on an application for leave to take proceedings to eject, the Board is *functus officio* and cannot re-hear that application.

It is true that section 9 (5) of the Ordinance of 1921 is not mentioned in Barrett-Lennard, J's judgment but I have no doubt that a counsel with the very high reputation of the late Mr. Koek, who appeared for the tenant in Melanie Lee's case, did not fail to bring its provisions to the notice of the Judge if indeed the latter could have overlooked it in this comparatively short ordinance. Indeed, the subsection was probably Mr. Koek's main ground of argument.

In my opinion, therefore, the headnote in Melanie Lee's case correctly represents what was decided; and, as I have said, the Legislature having re-enacted section 9 as section 7 of the Ordinance of 1939 after Barrett-Lennard, J's interpretation of subsection (5) has placed the stamp of its approval of Melanie Lee's case, and I must follow it whether or not I would have arrived at the same conclusion if that case had never been decided.

I would, however, add a word on Melanie Lee's case. As I read that judgment there was no actual decision that the Board was right in granting the hearing of 10th May. What the learned Judge said was that they were "probably" quite right. In the result it probably was, but I should have thought the correct procedure was certiorari to quash the order of 3rd May as having been made without jurisdiction, the tenant not having been served with the notice of hearing, and mandamus to hear the application. No doubt what the Board did would ultimately have been done had the more roundabout procedure been adopted.

I desire also to reserve the right, should the occasion arise, to consider whether a "hearing" such as took place on 10th May, when neither the landlord nor his counsel was present, when no evidence on behalf of the landlord was given and when counsel for the tenant, whether fully instructed or not, had no opportunity of cross-examining on evidence given on 3rd May, was in fact a hearing at all.

No such question arises in the case before me. It is not suggested that there was not a full and proper hearing and adjudication.

But Melanie Lee's case is binding upon me and I must decide that once the Board had jurisdiction to hear an application for leave to eject and has properly heard and adjudicated upon that application it cannot tack subsection (5) of section 7 on to section 8 and re-hear, reconsider or revise a case under the latter section.

The application for mandamus is dismissed with costs.

Application dismissed.

Solicitors for applicant—*Braddell Bros.*
Solicitors for respondent—*Chan and Eber.*

Note:—This decision was shortly after its promulgation reversed by Statute namely, the Increase of Rent (Restriction) Amendment Ordinance 1941—Editor M.L.J.

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

May 8, 1941.

REX vs. L. W. BURGESS.

[SINGAPORE MAGISTRATE'S APPEAL No. 8 of 1941]

Traction Engines and Motor Cars Ordinance (Cap. 214) s. 10 sub-s. 1—Driving a motor car negligently on public thoroughfare—Meaning of public thoroughfare.

The respondent was charged with driving a motor car on a public thoroughfare negligently, an offence under s. 10 sub-s. 1 of the Traction Engines and Motor Cars Ordinance (Cap. 214).

The road in question was the property of the Air Ministry. There were native shops on the road open to the public. The road itself was open to the public except that for twenty-four hours every year it was closed to the public at the Seletar Road entrance for preserving its private nature. On all other days of the year the public had access to the road. It was not however a public road.

Held, that on those days it was a public thoroughfare within the meaning of the section.

MAGISTRATE'S APPEAL.

The Magistrate on the facts set out in the headnote had held that the road was not a public thoroughfare and had acquitted the respondent. From this decision the Crown appealed.